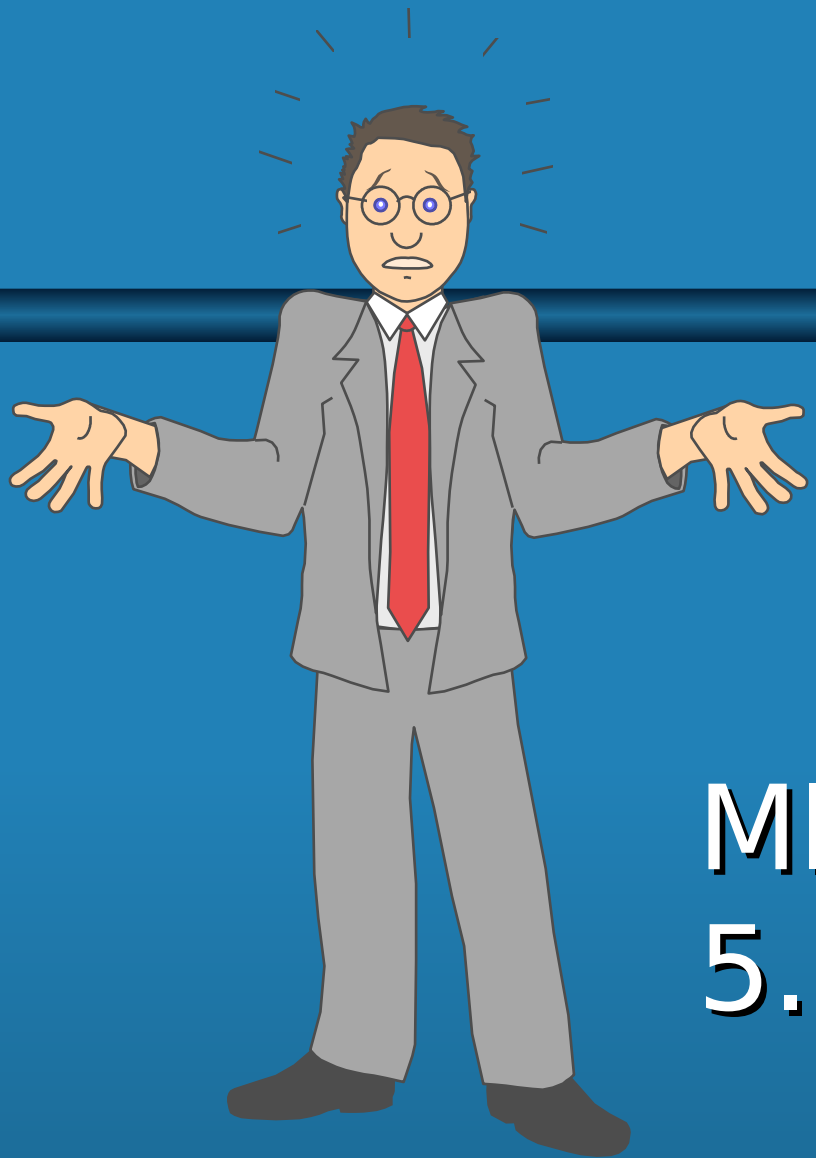
Indoctrination to Military Law



MILLAW
5.1

Terminal Objective

- Upon completion of this unit of instruction, the student will demonstrate knowledge of the fundamental principles and administrative procedures pertaining to military law.

ENABLING OBJECTIVES

- **5.1 Describe the 5 primary sources of military law**
- **5.2 Explain why the Uniform Code of Military Justice (UCMJ) was established**
- **5.3 Describe the 3 secondary sources of military law**

ENABLING OBJECTIVES

- **5.4 Describe the punitive articles of the UCMJ.**
- **5.5 List those who are subject to the UCMJ**
- **5.6 Summarize the contents of the Military Personnel Manual (MILPERSMAN)**

ENABLING OBJECTIVES

- **5.7 Explain jurisdiction and concurrent jurisdiction**
- **5.8 Identify the two criteria necessary for military jurisdiction**
- **5.9 Describe the concept of double jeopardy**
- **5.10 Explain the elements of an offense**

ENABLING OBJECTIVES

- **5.11 Explain lesser-included offenses (LIO)**
- **5.12 Explain maximum punishments**
- **5.13 Explain specifications of an offense**
- **5.14 Describe the 4 types of non-punitive administrative measures**
- **5.15 Define a non-punitive censure**

ENABLING OBJECTIVES

- **5.16 Explain the difference between individual right and privilege**
- **5.17 Identify privileges that can be withheld**
- **5.18 Define Extra Military Instruction**
- **5.19 Identify the limitations placed on Extra Military Instruction**

ENABLING OBJECTIVES

- **5.20 Explain when NJP should be used**
- **5.21 Describe the rights of members at NJP**

Question and Answers Policy

5 Primary Sources of Military Law

I. U.S. Constitution - Supreme Law
II. Uniform Code of Military Justice
III. Manual for Courts-Martial (MCM)
IV. Manual of the Judge Advocate General
V. Court Decisions of Appellate Courts

I. U.S. Constitution

- 1787
- The most basic source document for military law
- Article 1, Section 8 - Allows Congress to enact separate laws to govern the military

II. Uniform Code of Military Justice - UCMJ

- Lists what is legal in the military, applies to all services
- Also known as “Law of the Military”
- Total Articles: 146
  - 59 Punitive
  - 87 Procedural
- http://www.jag.navy.mil

III. Manual for Courts-Martial MCM

- Provides clarification on important areas such as:
  - Military Rules of Evidence
  - Maximum punishments
  - Authority for the administration of military justice
- "How to" book : Basic directive which implements the UCMJ

IV. Manual of the Judge Advocate General - JAGMAN

- Implements aspects of the UCMJ peculiar to the Navy and Marine Corps
- Reference for JAG investigations
- Used in claims against the govt., the injury or death of a Navy member, and accidents.
- Line of duty and misconduct is determined in order to award benefits.
- Three parts of a report are: Findings of facts, opinions, and recommendations.

V. Court Decisions

- Two types of courts in both the military and civilian sector. They are:
  - Trial courts - hear evidence and decide innocence or guilt. (Courts-martial)
  - Appellate courts - Reviews the decisions of the trial courts and decide issues of law.

3 Secondary Sources of Military Law

I. U.S. Navy Regulations
II. SORM
III. MILPERSMAN

I. U.S. NAVY REGS

- “Rights and responsibilities” of Naval personnel
- Regulatory document with the force of law
- These regulations are not punitive articles, but laws under which the Navy operates.
- The reference for a change of command letter

I. U.S. NAVY REGS

- Article 1023 - Abuse of Authority
- Article 1059 - Command of a Staff Corps “O”
- Article 1061 - Detail of an Executive Officer
- Article 1132 - Compliance with Lawful Orders

I. U.S. NAVY REGS

- Article 1134 - Exchange of Duty
- Article 1151 - Direct Communications / C.O.
- Article 1157 - Leave and Liberty
- Article 1159 - Possession of Weapons

II. SORM

- Provides regulations and guidance governing the conduct of all members of the Navy.
- OPNAVINST 3120.32C
- Defines general and specific duties, organizational relationships, etc.

II. SORM

- Article 301 - The Commanding Officer
- Article 302 - The Executive Officer
- Article 319 - Dental Officer
- Article 510.22 - Grooming & Appearance
- Article 510.24 - Hitchhiking

III. MILPERSMAN

- Administration of Naval Personnel
- Reference for Admin Discharges

III. MILPERSMAN

- Article 1040290 - Reenlistment Ceremony
- Article 1410170 - Flight Nurse Designation
- Article 3830340 - Resignation of an Officer
- Article 3430100 - U/A & Desertion
- Article 4210300 - Burial at Sea

When are Military Members Subject to the UCMJ?

- Active Duty
- Reserves On Active Duty - Drill (IDT), IDTT, AT, ADSW, AD Recall
- Reservists traveling to and from drill

When are Military Members Subject to the UCMJ?

- Military retirees receiving retirement pay
- POW's held by United States

Jurisdiction

- Military Jurisdiction- Authority of military courts to try a person subject to the UCMJ for offenses which are violations of the UCMJ. The right or power to interpret and apply the law.
- Two criteria:
  - 1. Member subject to UCMJ
  - 2. Offense must be a violation of one of the punitive articles of the UCMJ

Concept of Concurrent Jurisdiction

- If both the offense and the accused come under the authority of two different sovereigns both may try the accused.

Concept of Double Jeopardy Jurisdiction

- A person cannot be tried twice for the same crime by the same sovereign.

5 Parts of an Offense

- I. Article - The UCMJ consists of a total of 146 articles
- II. Elements - Each punitive article under the UCMJ has its own elements. These are specific facts that define each specific offense and ALL must be proven by the prosecution in order to convict the accused

5 Parts of an Offense

- III. Lesser Included Offenses (LIO)

  is an offense containing some of the elements of the offense charged, so that if one or more of the elements of the offense charged is not proven, the evidence may still support a finding of guilty of the included offense, (e.g., Unauthorized Absence (UA) is an LIO of Desertion).

5 Parts of an Offense

- IV. Maximum punishments - Each punitive article contains the maximum punishment an accused could receive at a General Courts-Martial.
- V. Sample specification - A plain, concise and definitive statement of the essential facts of the offense charged. Sample specifications are listed for each punitive article.

Punitive Articles

- **Example: Article 129 - Burglary**
  - a. **Text**
  - b. **Elements**
  - c. **Lesser-included offenses (LIO)**
    - »(1) Article 130 - Housebreaking
    - »(2) Article 134 - Unlawful entry
    - »(3) Article 80 - Attempts
  - d. **Maximum punishment**

Administrative Corrective Measures

- Leadership techniques which can be used to develop acceptable behavioral standards in members of a command. Administered either orally or in writing.
- Cannot be imposed as punishment for any military offenses.
- Non-punitive Measures (NPM)

4 Types of Administrative Corrective Measures

I. Counseling
II. Withholding privileges
III. EMI
IV. Non-punitive censure

I. Counseling

- Member needs to improve performance
- Counseled by direct supervisor
- Officers may get involved after the member's LPO and CPO do initial counseling.

II. Withholding of Privileges

- Special Liberty
- Exchange of Duty
- Special Command Programs
- Access to Base Clubs
- Special Pay Privileges
- Commissary and Exchange Privileges

III. Extra Military Instruction (EMI)

- Tool to correct a military deficiency
- Cannot be used as a punishment
- Limitations:
  - No more than 2 hrs a day
  - Not on member's Sabbath.
  - No longer than necessary to correct deficiency.
  - Not to deprive member of normal liberty.

IV. Non-punitive Censure

- Oral or written statement of adverse opinion or criticism of members conduct - Supervisor generated.
- Oral non-punitive censure - Oral reprimand

IV. Non-punitive Censure

- Non-punitive letter may include:
  - Identification of conduct
  - Performance deficiencies
  - Direction for improvement/corrective action
  - Sources of assistance
  - Consequences

Non-Judicial Punishment

- Administrative proceeding for all ranks. No permanent record of a federal conviction.
- Used in minor offenses only.
- Member has the right to make a statement.

Types of Offenses at NJP

- Dereliction of duty
- Provoking words and gestures
- Disobeying a lawful order
- Drunk driving
- Substance abuse